1942

File No. O. Shops & Estt 42

Legal **DEPARTMENT**

"A" **BRANCH**

Subject:—

Opinions under the Bomba Shops and Establishment Act, 1939

27/A

File No. O Shops & Estt/42

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Endnav Headdem
1/5

Office of the Asst.A.

Restaurant or Eating House" as defined in section 2(16) of the Bombay Shops and Establishments Act, 1939, means any premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre. A canteen attached to a factory for the purpose of catering to the needs of its employees only is essentially a private establishment. The employees of any particular factory cannot be treated as forming " a class of the public." Consequently a canteen providing refreshments to the employees of any particular factory and not to the general public or factory workers as a class cannot be deemed a restaurant or eating house within the meaning of section 2(16) of the Bombay Shops and Establishments Act, 1939 and section 19 of the Act would have no application.

sd/- P.B.M.
26/1

Remembrancer of Legal Affairs.

U.O. to P. & S.D. No. 778 dated the 27th January, 1942.

Madhav Mokadam.
4/6

Office of the R.L.A.

" Restaurant or Eating House" as defined in section 2(16) of the Bombay Shops and Establishments Act, 1939, means any premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre. A canteen attached to a factory for the purpose of catering to the needs of its employees only is essentially a private establishment. The employees of any particular factory cannot be treated as forming " a class of the public." Consequently a canteen providing refreshments to the employees of any particular factory and not to the general public or factory workers as a class cannot be deemed a restaurant or eating house within the meaning of section 2(16) of the Bombay Shops and Establishments Act, 1939 and section 19 of the Act would have no application.

sd/- P.B.M.
26/1

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 778 dated the 27th January, 1942.

Machev Lookadam.
4/8

R.I. No. 3681/42.

Submitted.

The question for consideration is whether partial exemption from the provisions of the Bombay Shops and Establishments Act, 1939, can be granted to the Restaurants and Hotels in Bombay and the suburbs under section 31 of the Act on account of any war emergency or whether total exemption under section 4(1) (k) will have to be granted.

3. Section 31 of the Bombay Shops and Establishments Act, 1939 provides that the Provl. Govt. may by notification in the Official Gazette, suspend the operation of all or any of the provisions of the Act for such period and subject to such conditions as it deems fit on account of any prescribed holidays or occasions. Rule 13 of the Bombay Shops and Establishments Rules, 1940, provides that Govt. may suspend the operation of the provisions of the Act under section 31 at the time of the holidays and occasions prescribed in that rule. One of such occasions is 'any occasion on which a public emergency is declared in this behalf by Govt. In R.L.A.'s opinion No. 6113 dt. 4/7/40, it was held that the period during which the war continues will not be such an occasion as contemplated under section 31. But this opinion was given before the Bombay Shops and Estt. Rules, 1940 came into force. It is desired that the provisions of the Act should be relaxed from now. Even if therefore no general public emergency is declared in the Bombay City and Suburbs, Govt. can declare as public emergency in this behalf under Rule 13 and can [illegible]

on

provisions
of certain sections of the Act in respect of certain establishments or classes of establishments for such period and subject to such condition as it deems fit (see R.L.A.'s No. 2171 dt. 11-3-41 and No. 11081 dt. 17/12/1940)

S. R. Potnis.

16/4

S. A.S.

I agree.

Section 31 of the Bombay Shops and Establishments Act, 1939, provides for power of the Provincial Government to suspend by notification in the Official Gazette the operation of all or any of the provisions of this Act for such period and subject to such conditions as it deems fit ~~xxxx~~ on account of any prescribed holidays or occasions. "Prescribed" means prescribed by rules made under this Act (see section 2(14) of the Act) One of the occasions prescribed by rule 13 of the Bombay Shops and Establishments Rules, 1940, is any occasion on which a public emergency is declared in this behalf by Government. An emergency due to war conditions would justify a declaration by Government of an occasion within the meaning of rule 13. Consequently it would be competent for Government to grant partial or conditional exemption to the restaurants in Bombay from the provisions of the Bombay Shops and Establishments Act whenever any public emergency due to war

conditions enclosed.

sd/-
17/4

A L R I agree. The post note may from the draft.

17/4

R .L.A.

Reply may be in terms of S. A. S.'s note.

sd/- P.N.M.
18/4

U. R. to P. & S. D. No. 3300 dated 20/4/1942.

Madhav Reckondam.
4/5
C/4

Office of the R.L.A.

The following is an extract from the Municipal Commissioner report on the administration of the Bombay Shops and Establishments Act, 1939, in the city of Bombay for the period ending 31st December 1941 :-

" There was also an unforeseen reaction. Where conditions of service were already better than those contemplated by the Act, employers began to harden them. For example, some of the shops where the working hours were less than 9½ hours raised them to ~~9½ hours raised them to 9½ hours raised them to 9½~~ as permitted by the Act. Similarly, certain commercial establishments where the monthly hours of work were between 160 and 175 raised them to 200-208 to get the advantage of the maximum of 208 allowed by the Act."

The questions for the consideration of the R.L.A. are :-

(1) whether the better conditions of service are rights and privileges within the meaning of section 35 of the Act. and.

(2) how effect can be given to that section.

2. The shorter hours and other more favourable conditions of service are benefits and privileges. The question is whether they are legally maintainable. Section 35 of the Act merely says that the Act will not affect the rights and privileges to which the employees are already entitled.

Section 35 does not enlarge the employees' legal claim to those rights and priyileges. If the employees enjoyed the shorter hours and other more favourable conditions of service under any law or contract, then the employees can maintain their claim to these conditions of service in a court of law.

If the employees enjoyed these concitions of service under any custom or usage then the employees could not maintain their claim unless the custom or usage had the force of law. It hardly seems possible that in the matter of working hours custom or isage

can establish a legal right. In any case, as the Act now stands, the employees will have to seek remedy. Section 35 of the Act does n ot confer upon Government any power to enforce the employees' cl aims to the fromer more favourable conditions of service.

sd/- P.N.M.

Remembrancer of Legal Affairs.

U.R. to Poll. & Services Deptt. No. 7536, dated 28th Sept. 42.

Madhav Raokadam
5/5
C/4